

§ 124.1017 Who may protest the disadvantaged status of a concern?

(a) In connection with a requirement for which the apparent successful offeror has invoked an SDB evaluation adjustment or an SDB set-aside, the following entities may protest the disadvantaged status of the apparent successful offeror:

(1) Any other concern which submitted an offer for that requirement, unless the contracting officer has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue;

(2) The procuring activity contracting officer; or

(3) SBA.

(b) In connection with an 8(d) sub-contract, or a requirement for which the apparent successful offeror received an evaluation adjustment for proposing one or more SDB subcontractors, the procuring activity contracting officer or SBA may protest the disadvantaged status of a proposed subcontractor. Other interested parties may submit information to the contracting officer or SBA in an effort to persuade the contracting officer or SBA to initiate a protest.

(c) An interested party seeking to protest both the disadvantaged status and size of an apparent successful SDB offeror must submit two separate protests, one as to disadvantaged status pursuant to this subpart, and one as to size pursuant to part 121 of this title. An interested party seeking to protest only size of an apparent successful SDB offeror must submit a size protest to the contracting officer pursuant to part 121.

§ 124.1018 When will SBA not decide an SDB protest?

(a) SBA will not decide a protest as to disadvantaged status of any concern other than the apparent successful offeror.

(b) SBA will not normally consider a post award protest. SBA may consider a post award protest in its discretion where it determines that a protest decision after award would have a practical effect (e.g., where the contracting

officer agrees to terminate the contract if the protest is sustained).

(c) SBA will not decide an untimely protest (see § 124.1020(c)).

(d) SBA will not decide a non-specific protest or one that does not present credible evidence that the protested concern's circumstances have materially changed since SBA certified it as an SDB, or that the protested concern's SDB application contained false or misleading information (see § 124.1021).

(e) An interested party may appeal SBA's dismissal of a protest for lack of specificity, timeliness, or a basis upon which SBA will consider a protest to SBA's Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development (DADA/GC&MED) pursuant to § 124.1024.

§ 124.1019 Who decides disadvantaged status protests?

In response to a protest challenging the disadvantaged status of a concern, the SBA's AA/SDBCE will determine whether the concern is disadvantaged.

§ 124.1020 What procedures apply to disadvantaged status protests?

(a) *General.* The protest procedures described in this section are separate and distinct from those governing size protests and appeals. All protests relating to whether a concern is a "small" business for purposes of any Federal program, including SDB set-asides and SDB evaluation adjustments, must be filed and processed pursuant to part 121 of this title.

(b) *Filing.* (1) All protests challenging the disadvantaged status of a concern with respect to a particular Federal procurement requirement must be submitted in writing to the procuring activity contracting officer, except in cases where the contracting officer or SBA initiates a protest.

(2) Any contracting officer who initiates a protest must submit the protest in writing to SBA in accord with paragraph (c) of this section.

(3) In cases where SBA initiates a protest, the protest must be submitted in writing to the AA/SDBCE and notification provided in accord with § 124.1022(a).